

ARTHUR ROBINSON & WEDDERBICKS  
1995

1995

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**HOUSING LOANS INSURANCE CORPORATION (TRANSFER OF ASSETS AND  
ABOLITION) BILL 1995**

**EXPLANATORY MEMORANDUM**

(Circulated by the authority of the Treasurer, the Hon Ralph Willis, MP)



## **HOUSING LOANS INSURANCE CORPORATION (TRANSFER OF ASSETS AND ABOLITION) BILL 1995**

### **GENERAL OUTLINE**

The purpose of this bill is to facilitate the restructure of the Housing Loans Insurance Corporation (HLIC) which will take the following form:

- the HLIC will be reconstituted as a new Government-owned company established under the Corporations Law and subject to regulation by the Insurance and Superannuation Commission (ISC). As is presently the case, the new company's non-borrowing liabilities will be Government guaranteed;
- the new company will be fully capitalised in line with the requirements of the ISC;
- the HLIC's existing portfolio of insurance policies (the 'old book') will, at the time of its restructure, become the responsibility of the Commonwealth in exchange for which the Commonwealth will receive the HLIC's capital and reserves; and
- the new HLIC company (the Company) will be contracted by the Commonwealth to manage the run-off of the old book. Claims arising from the old book will be met from future budget outlays.

The provisions of the Bill cover the following aspects of the restructure:

- the transfer of funds necessary to capitalise the Company to a level consistent with the requirements of the ISC;
- the transfer of the 'old book' and the Corporation's net capital and financial reserves to the Commonwealth;
- the appropriation of the necessary funds to meet claims arising from the 'old book';
- the transfer of staff and their conditions of employment; and
- the winding up of the Corporation and the repeal of existing legislation.

### **Housing Loans Insurance Act 1965**

This Act provided for the establishment and ongoing operation of the HLIC. Since its inception, the 1965 Act has been amended on a number of occasions to reflect changed circumstances. The Bill will repeal the 1965 Act.

### **Housing Loans Insurance Corporation (Sale of Assets and Abolition) Act 1990**

This Act, as the title suggests, provided authority for the Commonwealth to effect the, now defunct sale of the HLIC franchise to a private organisation. The provisions contained within the legislation were primarily aimed at facilitating that sales process. This Act, which is now redundant, will also be repealed by the Bill.

## FINANCIAL IMPACT STATEMENT

The estimated financial implications of the proposal, as set out in the Budget, are as follows:

- An estimated negative outlay to the budget of approximately \$100 million in 1995-96, reflecting the return to the Commonwealth of the HLIC's capital and financial reserves after allowance for the capitalisation costs of the new HLIC. (The actual contribution to the 1995-96 Budget will depend on, among other things, the HLIC's level of capital and reserves at the time the restructuring is effected.)
- Expected outlays in future years are - 1996-97: \$20m.; 1997-98: \$15m.; and 1998-99: \$8m. These outlays are largely related to costs associated with the management of the 'old book' on behalf of the Commonwealth.

## TERMS USED IN THE NOTES ON CLAUSES

The definition of terms used in the Explanatory Memorandum are consistent with those used in the Bill.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and, subject to paragraph 6(c) of the Bill, includes any rights, powers, privileges and immunities (whether actual, contingent or prospective, whether statutory or otherwise and wherever arising).

**authorised person** means:

- (a) the Minister; or
- (b) a person who is authorised by the Minister, by writing, to act under the provision in which the expression is used.

**Company** means the company incorporated, or to be incorporated, by or on behalf of the Commonwealth under the Corporations Law of the Australian Capital Territory by the name Housing Loans Insurance Corporation Limited.

**contract of insurance** means a contract of insurance under the Housing Loans Insurance Act and includes such a contract that is of a kind known as a cover note.

**Corporation** means the Housing Loans Insurance Corporation established by the Housing Loans Insurance Act.

**CSB Act** means the *Crimes (Superannuation Benefits) Act 1989*.

**DPP Act** means the *Director of Public Prosecutions Act 1983*.

**empt matter** means:

- (a) the operation of clause 7 of the Bill; or
- (b) giving effect to clause 7.

***Housing Loans Insurance Act*** means the *Housing Loans Insurance Act 1965*.

***instrument*** includes a document and an oral agreement.

***Insurance Account*** means the account required by subclause 10(3) of the Bill.

***liabilities*** means all liabilities, duties and obligations (whether actual, contingent or prospective, and wherever arising).

***Long Service Leave Act*** means the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before the transfer day.

***management agreement*** means:

- (a) the agreement referred to in subclause 10(1) of the Bill; or
- (b) if that agreement is varied by another agreement - that agreement as so varied.

***management period*** means the period in which the Company is, under the management agreement or under any variation of that agreement, to manage the pre-transfer contracts on behalf of the Commonwealth.

***Maternity Leave Act*** means the *Maternity Leave (Commonwealth Employees) Act 1973*.

***pre-transfer contract*** means a contract of insurance that is in force.

***share***, in relation to the Company, means a share or stock in the capital of the Company.

***SRC Act*** means the *Safety, Rehabilitation and Compensation Act 1988*.

***transfer day*** means a day fixed by the Minister by notice published in the Gazette.

***transferred employee*** means a person who under clause 14, is taken to have been engaged as an employee by the Company.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1. - Short title

Self-explanatory.

#### Clause 2. - Commencement

This clause provides for all parts of the Act, except Part 6, which covers the abolition of the principal legislation, to commence when the Act receives Royal Assent. Part 6 will take effect from a date to be proclaimed. The proclamation will be made after the transfer date, but no later than six months after that date. The different treatment accorded to Part 6 recognises that the continued legal existence of the Corporation is dependent on the *Housing Loans Insurance Act 1965* remaining in force. The preparation of reports etc associated with the wind-up of the Corporation cannot be finalised until it ceases operations and its assets and liabilities are transferred.

#### Clause 3. - Definitions

The same as in "Terms Used in the Notes on Clauses" above.

#### Clause 4. - Act binds the Crown

Without such a specific provision, the Act would not normally bind the Commonwealth, a State Government or the Governments of the Australian Capital Territory or the Northern Territory.

### PART 2 - THE COMPANY

#### Clause 5. - Shares in the Company

Clause 5 provides that any shares issued to the Commonwealth or its nominee are taken to be fully paid up. This will ensure that no further amounts are payable in respect of the shares by the Commonwealth or by anyone who buys the shares from the Commonwealth.

#### Clause 6. - The Company is not the Crown

This clause is intended to emphasise that the Company will not be an entity operating as an agent on behalf of the Crown and, as such, will not enjoy any benefits or privileges that such status would normally be expected to involve.

#### Clause 7. - Transfer of the Corporation's assets and liabilities

Clause 7 provides for the Treasurer to direct the transfer of the assets and liabilities of the Corporation to either the Company or to the Commonwealth, as appropriate. In essence, the Company will receive sufficient capital to comply with the requirements of the Insurance and Superannuation Commission (ISC), as well as funds to cover provisions for such matters as long service leave etc. It will also receive those non-financial assets and liabilities necessary for the continuation of the mortgage insurance business.

The insurance contracts in existence at the transfer date will be transferred to the Commonwealth along with the balance of the Corporation's capital and reserves.

**Clause 8. - Certain instruments and oral agreements to continue in force**

Clause 8 ensures that when the Corporation is named in an instrument, its position is effectively substituted for by either the Commonwealth or the Company, consistent with the transfer arrangements set out in Clause 7.

**Clause 9. - Pending proceedings**

This clause makes a similar provision for substitution of the Commonwealth for the Corporation in any legal proceedings that may be pending.

**PART 3 - MANAGEMENT OF PRE-TRANSFER CONTRACTS**

**Clause 10. - Agreement between the Commonwealth and the Company for the management of pre-transfer contracts and establishment of Insurance Account**

Subclause (1) allows for the Commonwealth to enter into an agreement with the Company to manage all pre-transfer insurance contracts on behalf of the Commonwealth for a period to be determined in that agreement.

Subclause (2) provides for the company to have custody of all documentation associated with these insurance contracts, but allows the Treasurer to nominate people who might be given access to that documentation.

Subclause (3) requires the Company to maintain a bank account to receive Government funds and against which to make payments as claims etc are approved. This account is designed to separate payments associated with pre-transfer contracts from those arising from the Company's own operations.

Subclause (4) provides the Company with access to the Corporation's records that are in the custody of the Australian Archives to enable it to carry out the task of managing the pre-transfer contracts.

**Clause 11. - Guarantee by Commonwealth**

Clause 11, which reaffirms that all pre-transfer contracts enjoy a Commonwealth guarantee, is designed to remove any uncertainty that might be created by the repeal of the Housing Loans Insurance Act. The guarantee covering the Corporation's existing contractual arrangements is provided for in Section 30 of that Act.

**Clause 12. - Payment into Insurance Account**

Subclause (1) provides that the Commonwealth will ensure that adequate funds are available in the Insurance Account throughout the management period to meet payments expected to be made in settlement of claims arising under pre-transfer contracts.

Subclause (2) provides for a standing appropriation of funds to meet the requirements arising from the previous subclause.

### **Clause 13. - Payment out of Insurance Account**

This clause establishes the broad parameters for the use of the Insurance Account, in particular, that it can only be used for the purpose of making a payment arising from a pre-transfer contract.

## **PART 4 - TRANSFER AND RIGHTS OF EMPLOYEES**

### **Division 1 - Transfer of employees from Corporation to Company**

#### **Clause 14. - Transfer to Company of employees of the Corporation**

Subclause (1) provides for all employees of the Corporation prior to the transition to be employed by the Company on the same terms and conditions on which they were employed immediately before the transition. In particular, contracts of employment and periods of employment of staff members of the Company are not broken by the operation of the Act, and accrued benefits are not affected.

Subclause (2) emphasises the continuity of service to remove any doubt that might exist.

Subclause (3) states that employees will be unable to use the circumstances of transferring to the Company to trigger a right to receive any payment or benefit on the basis that they are no longer employed by the Corporation.

Subclause (4) states that an auditor of the Corporation does not automatically become an auditor of the Company.

#### **Clause 15. - Variations of terms and conditions of employment**

This clause confirms that terms and conditions of each staff member's employment after the transfer may be varied in the same way as could be done immediately before the transfer.

### **Division 2 - Transitional and saving provisions in relation to long service leave**

#### **Clause 16. - Interpretation**

Subclause (1) states that, unless otherwise stated, expressions used in this Division have the same meaning as those used in the Long Service Leave Act.

Subclause (2) makes the following definitions used in this Division of the Act:

***Combined service period***, in relation to an employee, means the total of:

1. the period that was, immediately before the transfer day, the employee's period of service for the purposes of the Long Service Leave Act;
2. the period starting on the transfer day during which the employee continues to be an employee of the Company.

***employee*** includes a person employed in a full-time or a part-time capacity.

***future long service leave rights***, in relation to an employee, means any long service leave rights an employee acquires under an award, determination, industrial agreement or law (other than this Act) on or after the transfer day in relation to service on or after that day.

***law*** means

1. a law of the Commonwealth, or a State or Territory; or
2. regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

**Clause 17. - Long service leave for employees with less than 10 years service**

This clause provides for the granting of long service leave for the leave entitlements accrued under the Long Service Leave Act prior to transfer for employees who at point of transfer have less than 10 years service. If the employee continues to be employed by the Company until his or her combined service period is at least 10 years, the Company may grant the employee long service leave.

Subclause (4) provides for the granting of long service leave in the circumstances of retirement or retrenchment as long as the employee has a combined service period of at least one year. Leave granted under subclause (4) is to be taken so as to expire immediately before the employee is to retire or be retrenched.

Subclause (7) provides for the application of section 20 of the Long Service Act to calculate the rate of salary to be used in working out the full salary of an employee for the purposes of this provision.

**Clause 18. - Payments in lieu of long service leave for employees with less than 10 years service**

Clause 18 sets out the circumstances in which an employee can be paid an amount in lieu of long service leave accrued under the Long Service Leave Act for employment with the Corporation before the transfer day. The provision allows for an employee to elect not to be paid under this clause or to accept a lesser amount. Such a request is to be made to the employer in writing. The rate of salary to be used for this provision is to be the rate applicable to an employee under section 21 of the Long Service Leave Act, and the amount of leave is determined by subclause 20(2).

This provision may apply to employees on reaching minimum retirement age, or retrenchment, or cessation due to ill health. It also covers cessation of employment when an employee has a combined service period of at least 10 years.

**Clause 19. - Payment on the death of an employee**

This clause provides for the payment to a deceased employee's dependant (or dependants) of the amount that would be payable to the employee under clause 18 if on the day of the employee's death, the employee had stopped being an employee on or after reaching minimum retirement age. This provision applies as long as immediately before the transfer day the employee had less than 10 years service; or at the time of death had a combined service period of at least one year.



**Clause 20. - Employee's long service leave credit for the purposes of clauses 17 and 18**

This clause defines the long service leave credit of Corporation employees as being equal to the employee's long service leave under the Long Service Leave Act as at the transfer day.

**Clause 21. - Division not to affect an employee's future long service leave rights**

This clause provides certainty that the application of the provisions in this Division does not affect an employee's post-transfer long service leave rights. Long service leave associated with service with the Company after transfer will be a matter for the Company and its employees to agree in the context of relevant State and Territory legislation. Transferring employees do not have a dual entitlement to benefits under the Commonwealth Long Service Leave Act and other relevant legislation for the same period.

**Clause 22. - Saving - Long Service Leave Act**

This clause ensures that accrued long service leave credits, arising from pre-transfer service with the Corporation under the Long Service Leave Act, are retained post-transfer. For those employees who have qualified for long service leave under the Long Service Leave Act, the credit accrued as at transfer day is preserved at that point.

**Division 3 - Transitional and saving provisions relating to the Safety, Rehabilitation and Compensation Act 1988**

**Clause 23. - Interpretation**

This clause states that, unless otherwise stated, expressions used in this Division have the same meaning as those used in the SRC Act.

**Clause 24. - Transitional provisions relating to SRC Act in respect of certain employees of the Company**

This clause provides that the SRC Act continues to apply to employees of the Company who were employees of the Corporation immediately before the transfer day. It applies on and after the transfer day in respect of claims arising both from injuries suffered by employees of the Corporation and to loss of, or damage to, property incurred before transfer day.

**Clause 25. - Company liable to meet certain SRC Act liabilities and to be taken to be the employer in certain circumstances under the SRC Act**

The Company is liable to discharge the liabilities of the Corporation under the SRC Act and shall be deemed to be the employer of any employees of the Corporation before the transfer day for the purposes of the Act.

**Division 4 - Transitional and saving provisions in relation to maternity leave**

**Clause 26. - Interpretation**

This clause states that, unless otherwise stated, expressions used in this Division have the same meaning as those used in the Maternity Leave Act.

**Clause 27. - Transitional maternity leave provisions for maternity leave beginning on or after transfer day**

The Corporation's employees are currently able to avail themselves of provisions under the Maternity Leave Act which provide for leave for up to 12 months. Twelve weeks of this leave is on full pay with the remainder without pay, unless other leave is granted. Subclause (1) will preserve the entitlements of female officers and employees of the Company who were employees of the Corporation pre-transfer to apply for and be granted leave under the Maternity Leave Act, provided that such leave is begun within 12 months of the transfer date.

**Clause 28. - Transitional maternity leave provisions relating to employees of the Corporation who were on maternity leave immediately before the transfer day**

This clause preserves the existing rights of those employees of the Corporation transferring to the Company and who are currently on maternity leave.

**Division 5 - Transitional and saving provisions in relation to superannuation and other retirement benefits**

**Clause 29. - Transitional provision relating to the CSB Act**

Subclause (1) allows the CSB Act to continue to apply in relation to a corruption offence committed by an employee of the Company, while employed by the Corporation, prior to transfer time. Commonwealth authority in this part of the clause has the same meaning as in the CSB Act.

Where a person who was an employee of the Corporation commits a corruption offence while employed by the Corporation before the transfer day, an order will be able to be made against that person after the transfer day as if the Company were a Commonwealth authority. This is necessary because the Act can only apply if the employer is the Commonwealth or a Commonwealth Authority.

Subclause (2) ensures a superannuation order in relation to employer contributions can only be made against contributions which are paid or payable before the transfer day. It cannot be made against contributions paid after the transfer day.

Subclause (3) provides that where an order pursuant to paragraph 19(3) (d) of the CSB Act is made by the court in respect of funds paid into the Consolidated Revenue Fund before the transfer day by or on behalf of the Corporation, the order must specify that the amount is to be retained by the Commonwealth. This provision relates to funds not yet paid to the employee from the superannuation scheme.

Subclause (4) provides that where a corruption offence was committed by an employee of the Corporation before the transfer day and that a person was paid benefits before, on or after the transfer day out of the Consolidated Revenue Fund, then, despite paragraph 19(4)(b) of the CSB Act, an order under that paragraph may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund is paid to the Commonwealth. This provision related to funds which have already been paid to the employee from the superannuation scheme.

Subclause (5) ensures that an order cannot be made against the superannuation scheme of the employee if his or her corruption offence is committed after the transfer day.

Subclause (6) is self-explanatory.

### **Division 6 - Other transitional and savings provisions**

#### **Clause 30. - Saving - DPP Act**

This Clause provides for the DPP Act to apply with respect to acts or omissions in connection with the Corporation that occurred prior to the transfer date.

#### **Clause 31. - Cessation of mobility rights**

This clause provides for certainty that staff members who have coverage under Part IV of the Public Service Act (mobility provisions) will be unable to use the circumstances of transferring to the Company to trigger the right to reappointment to the Public Service.

### **PART 5 - MISCELLANEOUS**

#### **Clause 32. - Exemption from taxes**

Subclause (1) provides for the exemption from Commonwealth, State and Territory taxes of matters arising from the conversion of the Corporation into the Company as set out in Clause 7.

Subclause (2) provides that the Minister, or an authorised delegate, may certify that a matter is exempt or has been done because of, or for purposes connected with, a specified exempt matter.

Subclauses (3) and (4) provide that a certificate is conclusive evidence of that matter unless the contrary is established.

#### **Clause 33. - Registration etc. of changing title to assets**

Subclause (1) provides a mechanism for the registration of assets which transfer to the Commonwealth or the Company on the transfer date. Such registration is to be in the appropriate manner applicable to the State or Territory concerned.

Subclause (2) provides a mechanism for the registration of easements (which transfer to the Company) or any real property. Such registration is to be in the appropriate manner applicable to the State or Territory concerned. The land Registration official may register the easement of real property in the same way in which dealings in land of that kind are registered. An authorised person may give a certificate as to the transfer of real property or easements and such a document is taken to be valid unless the contrary is established.

#### **Clause 34. - Compensation for acquisition of property**

Subclause (1) provides for compensation to be paid if the operation of the Act results in acquisition of property other than on just terms.

Subclause (2) specifies that any damages or compensation recovered in proceedings begun under this clause must be taken into account in determining total compensation payable arising out of the same event or transaction.

Subclause (3) makes the following definitions to be used in this section of the Act:

*acquisition of property* and *just terms* have the same meaning as in paragraph 51(xxxi) of the Constitution.

*person* does not include the Corporation.

#### **Clause 35. - Company's financial statement and reports to be laid before Parliament**

This clause provides that when the Company lodges an annual return in accordance with Corporations Law of the Australian Capital Territory, the Company must give a copy to the Minister for tabling in Parliament.

#### **Clause 36. - Amendment of Commonwealth Borrowing Levy Act 1987**

This clause provides for consequential amendments of other Acts to ensure that the Company is subject to the Commonwealth borrowing levy.

#### **Clause 37. - Delegation**

Clause 37 authorises the Minister to delegate all or any of his or her powers provided under the Act to an Officer of the Department of the Treasury.

#### **Clause 38. - Regulations**

This clause provides for the Governor-General to make regulations not inconsistent with the Act.

### **PART 6 - ABOLITION OF CORPORATION**

#### **Clause 39. - Repeals**

This clause repeals the Housing Loans Insurance Act 1965 and the Housing Loans Insurance Corporation (Sale of Assets and Abolition) Act 1990.

#### **Clause 40. - Final report by the Corporation**

Subclause (1) specifies that the Corporation continues in existence in a technical sense so as to complete a final accounting to the Treasurer in respect of its pre-transfer operations. The final report is to comply with outstanding obligations under clause 39 of the Housing Loans Insurance Act which, despite being repealed, continues in force solely for this purpose.

Subclause (2) provides that, in the event the Corporation is wound up in the first 4 months of a financial year, the Corporation is required to produce only one annual report for the 16 month period rather than two reports, one for 12 months and one covering less than 4 months of operation.

**Clause 41. - Judicial notice of the Corporation's seal**

This clause provides that judicial notice shall continue to be taken of the seal of the Corporation applied in relation to any document issued prior to transfer.





